



U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION X

Henry M. Jackson Federal Building
915 Second Avenue, Room 3310
Seattle, Washington 98174-1099

October 9, 1998

Dr. Pamela J. Transue
President
Tacoma Community College
5900 South 12th Street
Tacoma, Washington 98465

Re: Tacoma Community College
Case No. 10972080

Dear Dr. Transue:

The Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint. In the complaint, it was alleged that the Tacoma Community College discriminated against a student on the basis of sex by failing to take appropriate action in response to allegations by a college student that she was sexually harassed by a faculty member during the 1997 spring quarter.

OCR conducted an investigation of the complaint under the authority of title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in programs and activities receiving federal financial assistance from the U. S. Education Department. The college is a recipient of federal financial assistance from this Department.

The issue investigated was whether the college failed to ensure that the complainant was not subjected to sexual harassment in violation of Title IX. Department of Education regulations setting forth the responsibility of the college to maintain a grievance procedure for the resolution of sex discrimination complaints, to designate a Title IX coordinator, and to refrain from sex discrimination have been promulgated at 34 CFR Part 106. See especially, 34 CFR 106.8, 106.9(a), and 106.31(a) and (b)(2), (4) and (7).

OCR has determined that the findings in the investigation do not support a conclusion that the college failed to comply with Title IX with respect to this complaint. OCR conducted on-site interviews with college staff on December 12, 1997. In addition, interviews were held with the complainant and other college students. The college also provided additional written materials relevant to the complaint issue. Based on a review and analysis of the information obtained in this investigation, the specific findings of fact, set forth below, form the basis of our conclusion.

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Findings of Fact

1. Tacoma Community College is a recipient of federal financial assistance from the U.S. Department of Education.
2. The college has a policy that addresses nondiscrimination on the basis of gender and sexual harassment: Chapter 132V-300WAC Grievance Procedure-Sexual Harassment, Sex Discrimination, and Disability Discrimination. The college catalog includes a statement of the college's nondiscrimination policy, identifies locations on the campus where students can obtain the procedures for filing complaints alleging discrimination, and lists the names and telephone numbers of college employees to assist who wish to file complaints.
3. Trish Geringer, Dean of Student Services, and Jan Miller, Director of Human Resources and Affirmative Action, are designated by the college to investigate allegations of sexual harassment. For complaints or grievances at the college that involve students, Dr. Geringer has responsibility for investigation. If a complaint involves a student and a faculty member, Dr. Geringer and Ms. Miller jointly coordinate the investigation. Both Dr. Geringer and Ms. Miller have received training in investigative practices and investigating sexual harassment complaints.
4. College faculty are advised of the nondiscrimination policy and the grievance procedure through new faculty orientation and the TCC catalog lists phone numbers for staff and faculty to call with questions, concerns or complaints. New students are required to attend a student orientation where sexual harassment is brought to their attention and the Student Handbook includes the names and phone numbers and locations of both Dr. Geringer and Ms. Miller.
5. The college's procedures indicate that a formal institutional grievance may be lodged with the designated college officer. The first step is to request and file a written complaint describing the specific grievances, including dates, times, places, circumstances, and any witnesses. A copy of the written complaint is provided to the person to whom the grievance is directed. Within 10 instructional days of receiving the complaint, the designated college officer shall arrange a meeting to hear the complaint. It is the discretion of the complainant whether the person against whom the complaint is directed will be present. The college officer chairs the meeting and each party may call witnesses. Each party may be represented by an attorney. Following the hearing and within 30 calendar days of receiving the written request, the college officer reports his or her findings in writing to both the complainant and the person against whom the complaint has been directed. The decision may be appealed to the college president.

6. During the 1997 spring quarter, the complainant enrolled in a class taught by a male instructor. It is the complainant's position that the instructor in this class sexually harassed her in late May 1997.
7. It is the complainant's position that she told no one until 2 days after the main incident of harassment when she went to the head of the English Department to report that she was being sexually harassed by the instructor. She stated that the Department Chair took her directly to the Dean of Students who listened to her complaint. This meeting occurred on or about May 22, 1997. It is the student's position that she told the Dean of Students that: the instructor made inappropriate comments to her about her appearance and engaged in other inappropriate conduct which the student believed was sexual in nature; she wanted the behavior to stop; the instructor's behavior toward her was very upsetting ; and, she had asked the instructor to stop the behavior but it continued.
8. It is the position of the Dean of Students that the complainant told her the instructor had engaged in inappropriate sexual conduct although the conduct in question differed in some respects from that which the student alleges she referred to in the discussion with the Dean. It is the Dean's position that she considered the situation a formal complaint and asked the complainant to put her concerns in writing and to meet with the Dean and the College's Human Resources Director the next day. During the meeting the next day, the Dean gave the complainant a copy of the College's "GRIEVANCE PROCEDURE–SEXUAL HARASSMENT, SEX DISCRIMINATION, AND DISABILITY DISCRIMINATION" (WAC Chapter 132V-300) and discussed the formal investigative procedure to be followed. The Dean stated to OCR that she then escorted the complainant to meet with a counselor at the college because the complainant was obviously upset.
9. It is the Dean's position that, prior to meeting with the Human Resources Director, she and the complainant went to the instructor's classroom to view the room and also for the complainant to identify students who could support the complainant's allegations about statements made by the instructor in the classroom. A student in the classroom was asked by the complainant whether the instructor had said the complainant was beautiful in the classroom. According to the Dean, the student replied, "Yeah, there was something like that." The Dean told the complainant that it was premature to interview a student witness, that she needed to follow a sequence of gathering information from the complainant and speaking with the instructor before she began interviewing students.
10. After receiving the complainant's written complaint, dated May 23, 1997, the Dean and the Human Resources Director met with the instructor to discuss the complainant's

allegations. It is the Dean's position that during this meeting: the instructor denied making any comments to the complainant in class as alleged nor did he recall a visit to his office by the complainant; the instructor acknowledged that he touched the complainant and that he touches all students on their shoulder or arm as a method of communication; the complainant may have viewed his touching her as an invasion of her space but that he was not aware of it; and, he could have brushed up behind the student as he was grading papers but that it was never intentional. It is the Dean's position that the instructor told her that he was willing to do whatever needed to be done to make the student feel comfortable with her education and resolving the situation.

11. OCR interviewed the instructor. He denied that he made any comments in his classroom as alleged by the complainant. He stated that it is his teaching style to touch all students to reassure them but he did not recall ever touching the complainant. The instructor stated that given the narrow aisles in his classroom he frequently stood behind the complainant to grade the homework papers of students seated in the back of the room. The instructor denied any recollection that the complainant ever came to his office.
12. The complainant's position is that, one day after meeting with the Dean, she was asked to return to the Dean's office where they discussed the Dean's meeting with the instructor. According to the complainant, the Dean told her that the instructor had admitted his actions, had agreed to get counseling, and as a result, no further investigation was necessary. It is the position of the complainant that the Dean then called her assistant into the meeting and dictated a letter reflecting that no further action would be taken. She said the Dean then took her to a counselor's office on campus to get assistance.
14. It is the Dean's position that she informed the complainant of her discussion with the instructor and that the formal investigation was concluded because the complainant was comfortable with a resolution based on the instructor's statement that he would do whatever was necessary to enable the student to feel comfortable and to resolve the situation. It is the Dean's position that there was no need to conduct interviews of other students to corroborate either the complainant's allegations or the instructor's response because of the resolution. It is the Dean's position that the complainant wanted the investigation to come to a conclusion and felt comfortable with the resolution.
15. There were no other persons present during the relevant portions of the meeting described in the above two findings. In the absence of additional witnesses or other

information to corroborate either the Dean or the complainant's version of the meeting, OCR is not able to reach a finding regarding the specific exchanges that occurred.

16. A letter to the complainant from the Dean of Student Services, dated May 23, 1997, documents an agreement by the complainant that allegations of sexual harassment against the instructor have been resolved and that no further action would be taken. The resolution referenced awareness by the instructor of the potential consequences and impact of his actions and comments, an updated grade report for the student with an opportunity to retake an exam, and transfer of the student to a different instructor for the remainder of the quarter. The letter also offers assistance in "connecting" the student with off-campus counseling.
17. On June 2, 1997, the complainant signed a document entitled "Resolution (revised June 2, 1997)." It was signed and dated by the Dean on June 3, 1997. The document is consistent with the letter to the complainant dated May 23, 1998, except that it states the complainant will withdraw from her classes and retake them at a later time rather than be placed with another instructor for the remainder of the quarter.

Analysis and Conclusions

The issue investigated in this case was whether the college discriminated against the complainant by failing to ensure that the complainant was not subjected to sexual harassment in violation of Title IX.

The regulation implementing Title IX at 34 CFR 106.8 requires that a recipient designate at least one employee to coordinate its compliance efforts and carry out its responsibilities, including investigations of complaints alleging violations of title IX. In addition, the recipient must adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action which would be prohibited by Title IX. While the complainant was not initially aware of the college officials with whom harassment complaints are filed, the student handbook includes the college's statement on sexual harassment. The handbook also states that procedures for filing sexual harassment complaints are available in the ASTCC President's Office, the Dean of Student Services, and the Human Resources Department. Moreover, the Chair of the English Department immediately took the complainant to the office of the Dean of Student Services as soon as she was made aware of the complainant's allegations.

OCR found the Dean of Student services had at least two meetings with the complainant during which the complainant made a formal complaint. OCR found that the complainant provided the Dean with a written complaint that was signed and dated May 23, 1997. The Dean and the Human Resources Director interviewed the complainant and the

instructor. OCR found that the complainant was present when a letter to her was drafted with the Dean that sets forth a resolution of the complainant's allegations. The letter, dated May 23, 1997, documents a resolution of the complaint and an agreement that no further action would be taken by the college. The complainant signed a revised version of the resolution agreement on July 2, 1997.

In so far as is relevant to this complaint, sexual harassment is unwelcome verbal or physical conduct of a sexual nature, imposed on the basis of sex by an employee or agent of a recipient, that denies or limits a student's access to aid, benefits, or services offered by the recipient, or that interferes in the provision to or the enjoyment by the student of any aid, benefit, or service. In resolving complaints of sexual harassment under Title IX, OCR will consider: (1) whether the recipient has a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures; (2) whether the recipient appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) whether the recipient has taken immediate and appropriate corrective action responsive to the alleged harassment. If the school has taken each of these steps, OCR will consider the case against the school resolved. In this case, the college promptly undertook actions to address the complainant's allegations and, within several days, reached and implemented an equitable resolution, to which the complainant agreed in writing. OCR was not able to find that the college's actions in reaching a resolution were inappropriate or inconsistent with Title IX requirements. Based on OCR's determination that the college has a policy prohibiting sex discrimination under Title IX, and promptly addressed the allegations, and the complainant's documented agreement at the time to the resolution of her internal complaint, OCR is unable to conclude that the college failed to comply with Title IX with respect to the issue raised in this complaint.

This letter is not intended, nor should it be construed, to cover any other issues regarding compliance with Title IX that may exist and that are not discussed herein.

We appreciate the cooperation that you and your staff extended to OCR in working to achieve a satisfactory resolution of this case. We are closing this case as of the date of this letter. If you have any questions regarding this letter, please contact Patricia A. Yates, special projects coordinator, at (206) 220-7924.

Sincerely,



Gary D. Jackson
Director, Seattle Office
Western Division